

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

77 - 2125

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SALVATORE JAMES RAFFONE,

Petitioner-Plaintiff-Appellant,

-against-

SGT. DANIEL SULLIVAN, Milford Police
Department, GOVERNOR ELLA T. GRASSO,
State of Connecticut, GOVERNOR ASKEW,
State of Florida,

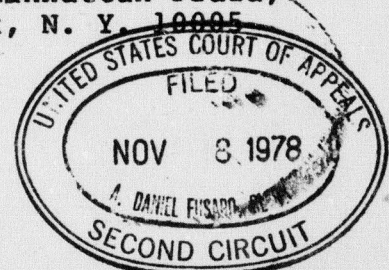
Respondents-Defendants-Appellees.

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P/S
DOCKET NO.
77-2125

On Appeal from the United States District Court
for the District of Connecticut

BRIEF AND APPENDIX FOR
PETITIONER-PLAINTIFF-APPELLANT

TORREY L. WHITMAN,
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SALVATORE JAMES RAFFONE

-against-

Respondents-Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Does the abduction from the asylum state of a person named in an extradition warrant by police officers of the demanding state, when that person is challenging the extradition warrant through proper court proceedings, is free on bail and has obtained a stay of enforcement of the extradition warrant in the asylum state, state a claim upon which relief can be granted under the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983?

(The following Statement is set forth in detail in order to clarify the nature of the proceedings below

and the posture of the case in this Court.)

On April 27, 1976, Salvatore Raffone ("plaintiff"), while incarcerated in a Connecticut penal institution, filed pro se in the United States District Court for the District of Connecticut a "Petition for Writ of Habeas Corpus" (Doc. 2*), and a "Lawsuit Under Civil Rights Act" (Doc. 3), both basing jurisdiction on 42 U.S.C. §§ 1983 and 1985 and 28 U.S.C. § 1343. Both documents sought monetary damages only, and neither sought plaintiff's release from prison. Named as respondent in the habeas petition was Sgt. Daniel Sullivan of the Milford, Connecticut, Police Department, and named as respondents in the "Lawsuit" complaint were Governors Ella T. Grasso of Connecticut and Reubin Askew of Florida and Sgt. Bell of the Broward County, Florida, Sheriff's Department.

Service of the papers was stayed, apparently at the request of plaintiff's counsel, pending resolution of state charges then pending against plaintiff. (Doc. 5.) Those charges resulted in plaintiff's conviction, and service of his petition and complaint was initiated on January 12, 1977, by order of Judge Jon O. Newman. (Doc. 5.)

Defendant Grasso denied the allegations of the

* References are to documents in the Record on Appeal.

complaint and moved to dismiss for failure to state a claim and for lack of jurisdiction. Defendant Bell moved to dismiss for failure to state a claim and for lack of proper service and lack of personal jurisdiction. Defendant Sullivan moved to dismiss for failure to state a claim and for lack of subject matter jurisdiction. While these motions were pending, plaintiff, at all times proceeding pro se, served interrogatories upon each of the defendants (Docs. 20 through 26). At the same time, plaintiff filed a motion for leave to file a supplemental complaint and supplemental complaint (Docs. 26 and 27).

On June 1, 1977, Judge Newman dismissed the complaint against Sgt. Bell for lack of personal jurisdiction. This ruling is not being appealed.

In an opinion filed September 8, 1977 (Doc. 40), reported at 436 F. Supp. 939, Judge Newman--treating the petition and the complaint as having instituted a civil rights action for money damages, a treatment in which plaintiff concurs--dismissed the complaint as to all defendants for failure to state a Federal claim. Judgment was entered the same day.

On September 28, 1977, plaintiff filed a notice of appeal, and on September 29, plaintiff's motions for a certificate of probable cause and for leave to appeal in

forma pauperis were granted.

The case is now before this Court on appeal, with jurisdiction based upon 28 U.S.C. §§ 1291, 1343 and 2253.

Statement of Facts

Early in 1976, Salvatore James Raffone, petitioner-plaintiff in this action and appellant before this Court was arrested in Florida on a "Fugitive from Justice Warrant" issued by the State of Connecticut, following the issuance in Milford, Connecticut, on February 3, 1970, of an arrest warrant charging him with armed robbery and other crimes. (Doc. 2, p. 1.*) Plaintiff thereupon instituted proceedings in the Florida state courts and in Federal court in Miami challenging the validity of his arrest under the Fugitive Warrant. (Doc. 2, p. 1; Doc. 6, ¶ (2).) The Circuit Court of Broward County, Florida, issued an order staying execution of the governor's warrant until the Florida judicial review proceedings had concluded. On January 13, 1976, plaintiff was released on \$20,000 bail.

* Citations are to documents in the Record on Appeal. Reference is made in a few instances to allegations of fact contained in the interrogatories propounded by plaintiff (none of which have been answered); it is respectfully requested that the Court permit these references in view of the nature of the papers submitted to the District Court by plaintiff pro se.

(Doc. 3, ¶ V.)

Thereafter, on Friday, March 5, 1976, at 4:30 p.m. (Doc. 27, ¶ (1)), Sgt. William Bell, of the Broward Sheriff's Department, along with two Pompano Beach policemen, acting in concert with respondent-appellee Sgt. Daniel Sullivan, of the Milford, Connecticut, Police Department, arrested plaintiff at his home in Pompano Beach and placed him in jail. (Doc. 22, ¶ (2)a.; Doc. 2, p. 1.) Plaintiff was arraigned following this arrest on Saturday, March 6. At the arraignment, plaintiff sought his release on the grounds that (i) bail had already been posted and (ii) a stay of further proceedings on the Fugitive Warrant had been granted. The presiding magistrate indicated that he lacked authority to release plaintiff and advised him to move for his release in Broward County court on Monday, March 8; plaintiff was remanded to jail. (Doc. 27, ¶¶ (4) through (6).) On Sunday morning, March 7-- while, as Sgt. Bell and Sgt. Sullivan both knew (Doc. 2, p. 2), the Florida court stay order was still in effect and plaintiff's bail unrevoked--Sgt. Bell turned plaintiff over to Sgt. Sullivan and another Milford policeman who transported plaintiff, under protest and against his will, ignoring his repeated requests to call his attorney, to a nearby airport, from which they flew him back to

Connecticut and placed him in jail. (Doc. 27, ¶ (7).)

Plaintiff was subsequently tried and convicted in Connecticut and he is now serving out his sentence in the Connecticut Correctional Institution, Somers.

Plaintiff filed the present action in the United States District Court for the District of Connecticut on April 27, 1976.

Argument

DEFENDANTS, BY ABDUCTING PLAINTIFF FROM FLORIDA WHILE HIS PROPERLY INSTITUTED COURT CHALLENGE TO THE EXTRADITION WARRANT WAS UNDERWAY, WHILE HE WAS FREE ON BAIL AND WHILE ENFORCEMENT OF THE EXTRADITION WARRANT AGAINST HIM WAS STAYED, DEPRIVED PLAINTIFF OF HIS CONSTITUTIONALLY GUARANTEED CIVIL RIGHTS.

At stake in this litigation are the rights of one man and the integrity of the interstate extradition process. Affirmance of the decision below would put this Court's imprimatur on the cavalier actions of the Connecticut police in flouting a valid court order to suit their own wishes and in disregarding state and Federal law and the constitutional principles controlling interstate extradition.

Defendant Sgt. Sullivan, of the Milford, Connecticut police, not content to rely on the normal,

properly instituted judicial process, abducted plaintiff from Florida and spirited him back to Connecticut during the course of plaintiff's habeas corpus proceeding challenging the extradition warrant against him--while, as Sgt. Sullivan knew, plaintiff was free on bail and an order staying execution of the extradition warrant was in effect. As a result, plaintiff's constitutional rights to due process of law and to be free from unreasonable seizures and illegal arrest were violated. To seek redress for that violation under the Federal Civil Rights Act, 42 U.S.C. § 1983 (1970), which has been held to encompass a claim for damages under similar circumstances--Sanders v. Conine, 506 F.2d 530 (10th Cir. 1974); Wirth v. Surles, 562 F.2d 319 (4th Cir. 1977), cert. denied, 435 U.S. 933 (1978); see Picking v. Pennsylvania R.R. Co., 151 F.2d 240 (3d Cir. 1945), overruled on other grounds, Bauers v. Heisel, 361 F.2d 581 (3d Cir. 1966); see also United States ex rel. McCline v. Meyering, 75 F.2d 716 (7th Cir. 1934)--plaintiff brought this action. The court below, in granting defendants' motion to dismiss for failure to state a claim upon which relief could be granted, misconstrued the issues in this case of first impression in this Circuit and, in so doing, committed reversible error.

A Federal civil rights claim should not be dis-

missed unless it appears beyond doubt the plaintiff can prove no set of facts entitling him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). This Court, in reviewing dismissal of plaintiff's complaint for failure to state a claim, must construe the complaint liberally and draw therefrom all reasonable inferences in plaintiff's favor. Blum v. Probate Court of Chittenden County, 575 F.2d 50 (2d Cir. 1978).

The complaint and supporting documents in this case make clear that defendants violated plaintiff's constitutional rights.

To state a claim under 42 U.S.C. § 1983* the complaint must assert that defendants, acting "under color of" state law, deprived plaintiff of rights secured to him by the Constitution or laws of the United States. The court below properly assumed that defendants acted under color of state law when they kidnapped appellant in Florida, and confined its opinion to a consideration of whether plaintiff had been deprived of a constitutional or Federal statutory right.

* 42 U.S.C. § 1983 provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

A. Defendants acted under color of state law.

Sgt. Sullivan and the unnamed officer accompanying him to Florida took plaintiff from the Florida jail in order to bring him back with them to Connecticut to stand trial. The record, although incomplete, supports no conclusion other than that in so doing they were acting in an official capacity and clothed in the power of their office, both as police officers and as agents of the state of Connecticut. As one court has noted, when a policeman from one state enters another to obtain custody of a suspect and returns the suspect without extradition to the state in which the policeman serves, he is acting under color of state law. Wirth v. Surles, supra, 562 F.2d at 321.

As there is no basis whatsoever in the record for concluding that defendants acted other than in their official capacities, the "under color of" requirement of § 1983 must be considered satisfied in this case.

B. Defendants deprived plaintiff of his rights under the Fourth Amendment, the Fourteenth Amendment and the Federal extradition statute.

The court below pointed out that the Uniform Criminal Extradition Act, in effect in both Florida and Connecticut, "sets up certain procedural safeguards for the

benefit of the accused", for the violation of which certain sanctions are provided. Raffone v. Sullivan, 436 F. Supp. 939, 940-941 (D. Conn. 1977). "But since the safeguards derive from state rather than federal law, § 1983 does not provide a remedy for their breach." Id. at 941. Whether or not this be true, it is well settled that state law provides an alternative remedy for civil rights violations, not an exclusive or prior one. A § 1983 plaintiff need not exhaust his state law remedies before proceeding with his Federal civil rights claim, Ellis v. Dyson, 421 U.S. 426, 432-433 (1975), and in this suit plaintiff seeks redress for Federal law violations and is not seeking a remedy under state law.

The court below seriously erred in paying such scant attention to the Federal constitutional and statutory safeguards attaching to the interstate extradition process. Extradition, being of a "uniquely federal character", is "a matter of overriding federal interest and control". DeGenna v. Grasso, 413 F. Supp. 427, 431 (D. Conn.) (3-judge court), aff'd sub nom. Carino v. Grasso, 426 U.S. 913 (1976). Even in states which have adopted the Uniform Criminal Extradition Act, as have Connecticut (Conn. Gen. Stat. Annot. §§ 54-157 to 54-185 (West 1960)) and Florida (West's F.S.A. §§ 941.01 to 941.30 (1973)), "[i]t is well settled that

proceedings for interstate extradition of criminals are controlled by federal law". Wellington v. State of South Dakota, 413 F. Supp. 151, 153 (D.S.D. 1976); United States ex rel. McCline v. Meyering, 75 F.2d 716, 717 (7th Cir. 1934).

The courts have made clear that extradition cannot be legally accomplished without regard to the Constitution.

"The alleged fugitive has a right not to be imprisoned or dealt with by the states in disregard of those safeguards provided by the Constitution and statutes of the United States." United States ex rel. McCline v. Meyering, supra, 75 F.2d at 717.

Especially important in the present case is the Fourth Amendment requirement of

"a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty [which] determination must be made by a judicial officer either before or promptly after arrest." Gerstein v. Pugh, 420 U.S. 103, 125 (1975) (footnotes omitted).

Because of the extent and significance of the pre-trial detention resulting from arrest on an extradition warrant and from extradition itself, judicial determination of probable cause is a prerequisite to interstate extradition. Ierardi v. Gunter, 528 F.2d 929, 930 (1st Cir. 1976); Kirkland v. Preston, 385 F.2d 670 (D.C. Cir. 1967).

As these cases recognize, a person arrested on a fugitive warrant is nonetheless arrested, restrained, taken into

custody and deprived of liberty.

"The law appreciates the hardship which extradition can involve: not only the suspension of one's liberty, but his deportation from the state in which he lives into another jurisdiction which may be hundreds of miles from his home. The law accordingly surrounds the accused with considerable procedural protection to stave off wrongful rendition. It is consistent with this concern for the accused's just treatment to recognize his right to require official confirmation of probable cause in the asylum state before extradition." Kirkland v. Preston, supra, 385 F.2d at 676 (footnotes omitted; emphasis added).

It was precisely the Florida court's inquiry into probable cause, mandated by the Fourth Amendment, that defendants circumvented by knowingly removing plaintiff from Florida while his habeas corpus proceeding was pending.

Moreover, the denial of plaintiff's Fourteenth Amendment rights to due process of law is evident. The Supreme Court has long held that a person whose rendition is sought "is entitled to invoke the judgment of the judicial tribunals" to determine "the lawfulness of his arrest and imprisonment" under the extradition warrant. Roberts v. Reilly, 116 U.S. 80, 94 (1885).

"It must appear, therefore, to the governor of the State to whom such a demand is presented, before he can lawfully comply with it, first, that the person demanded is substantially charged with a crime against the laws of the State from whose justice he is alleged to have fled, by an indictment or an affidavit, certified as authentic by the governor of the State making the demand; and second, that the person demanded is a

fugitive from the justice of the State the executive authority of which makes the demand.

"The first of these prerequisites is a question of law, and is always open upon the face of the papers to judicial inquiry, on an application for a discharge under a writ of habeas corpus. The second is a question of fact, which the governor of the State upon whom the demand is made must decide, upon such evidence as he may deem satisfactory." Id. at 95.

These two questions--(i) whether the extradition papers are in proper order and (ii) whether the accused was in the demanding state when the crime is alleged to have been committed, Sanders v. Conine, 506 F.2d 530, 532 (10th Cir. 1974)--set both the upper limit and the lower limit to the inquiry in an extradition habeas proceeding. The person who petitions for a writ of habeas corpus following his arrest on a fugitive warrant is entitled to have these questions answered.

According to plaintiff's allegations--which must be considered true in reviewing the sufficiency of the complaint on this appeal from the granting of a motion to dismiss, Miree v. DeKalb County, 433 U.S. 25, 27 n.2 (1977), and which must be read with "the generosity required in pro se civil rights actions", Johnson v. Glick, 481 F.2d 1028, 1033 (2d Cir.), cert. denied sub nom. Employee-Officer John v. Johnson, 414 U.S. 1033 (1973)--plaintiff brought an action in state court to test the legality of his arrest under the

fugitive warrant and extradition was stayed pending the outcome of the hearing. However, in knowing disregard of the court order, Sgt. Sullivan, in concert with the Florida police, removed plaintiff from Florida on a Sunday morning, while his court proceedings were pending, and flew him to Connecticut.

Although Florida had a duty to release plaintiff to the Connecticut authorities, that duty arose only if the documents submitted with the extradition demand complied with the requirements of the Federal extradition statute. DeGenna v. Grasso, supra, 413 F. Supp. at 432. "[T]he authorities in the asylum state must be satisfied that the affidavit shows probable cause." Kirkland v. Preston, supra, 385 F.2d at 676. Once the judicial process was convened, "the authorities in the asylum state" were the courts of Florida, not the Connecticut police, and plaintiff had the right to have his properly convened court action concluded before he was extradited. Plucking plaintiff from the asylum state while the judicial review process was underway was not merely a denial of due process; it was a denial of all process.

C. Because plaintiff does not seek to reverse his conviction, the Ker-Frisbie line of cases is not germane to the present case.

The Supreme Court has held that a person brought

into a jurisdiction forcibly and without extradition proceedings may constitutionally be tried in that jurisdiction for a crime against its laws. Ker v. Illinois, 119 U.S. 436 (1886); Frisbie v. Collins, 342 U.S. 519 (1952); see also Gerstein v. Pugh, 420 U.S. 103 (1975). The court below observed that this "time-worn rule . . . has given way in our Circuit to more modern conceptions of due process[,]" Raffone v. Sullivan, supra, 436 F. Supp. at 941, citing United States v. Toscanino, 500 F.2d 267 (2d Cir. 1974), United States ex rel. Lujan v. Gengler, 510 F.2d 62 (2d Cir.), cert. denied, 421 U.S. 1001 (1975), and United States v. Lira, 515 F.2d 68 (2d Cir.), cert. denied, 423 U.S. 847 (1975), with the result that this Court will not uphold a conviction where the defendant was brought into this jurisdiction through a "complex of shocking governmental conduct sufficient to convert an abduction which is simply illegal into one which sinks to a violation of due process". Raffone, supra, 436 F.Supp. at 941, quoting Lujan, supra, 510 F.2d at 66. The court below held, however, that plaintiff had not alleged "[c]onduct sufficiently 'shocking to the conscience'" to support his claim. Id. In applying the Toscanino line of cases to the facts of this case, the court below erred fundamentally.

The essential point in this case is that plaintiff's

civil rights were denied when the constitutionally-mandated judicial process, already begun, was aborted by the actions of Sgt. Sullivan in circumventing the courts and spiriting plaintiff out of Florida. Unlike the relief sought in Ker, Frisbie, Toscanino, Lujan and Lira, plaintiff does not seek to set aside his conviction. In this case plaintiff seeks civil redress for the deprivations of his constitutional rights. Indeed, in Ker, which specifically held that the illegality of the method by which a person charged with a crime is brought into the prosecuting jurisdiction is not grounds for overturning the subsequent conviction, the Supreme Court observed that the convicted person, although his conviction stood, "would probably not be without redress, for he could sue" the party who acted in violation of law in effecting the extradition. 119 U.S. at 444. This is precisely the suit plaintiff has brought.

D. Plaintiff's subsequent conviction does not bar his § 1983 action.

The fact that plaintiff was convicted in Connecticut following his return there has no bearing on the viability of his claim under § 1983, and the court below erred in holding to the contrary. Wirth v. Surles, 562 F.2d 319 (4th Cir. 1977), cert. denied, 435 U.S. 933 (1978), held that a complaint alleging arrest and transportation of a fugitive

without proper extradition proceedings states a claim under § 1983 despite the fact that the § 1983 plaintiff had pleaded guilty to the charges upon which he was extradited. Indeed, this principle underlies the statement of the Supreme Court in Ker, just quoted, that the convict, though his conviction stood, could sue for damages arising from the illegal extradition.

Nonetheless, should this Court feel that plaintiff's subsequent conviction prevents him from proving compensatory damages, it is clear that punitive damages may be awarded in a § 1983 case, "even in the absence of actual damages". Stolberg v. Members of the Board of Trustees for the State Colleges of Connecticut, 474 F.2d 485, 489 (2d Cir. 1973). As this Court has said, "punitive damages may be an integral part of the remedy in a civil rights action". Zarcone v. Perry, 572 F.2d 52, 54 (2d Cir. 1978). In a case such as this, where defendant Sullivan acted in knowing, wilful disregard of a valid and existing court order and abducted plaintiff on a Sunday morning--moreover, immediately following the magistrate's suggestion to plaintiff that he move for his release on Monday--punitive damages would be especially appropriate.

This Court cannot allow overzealous police to ignore valid court orders and violate the law with impunity

whenever they deem it expedient to do so. When those whose job it is to enforce the law act instead in defiance of it, they must be held accountable.

Conclusion

The decision of the District Court should be reversed and the case remanded for further proceedings.

Respectfully submitted,

Torrey L. Whitman
Attorney for Plaintiff-
Petitioner-Appellant

SALVATORE JAMES RAFFONE

-against-

Respondents-Defendants-Appellees.

DOCKET NO.
77-2125

APPENDIX

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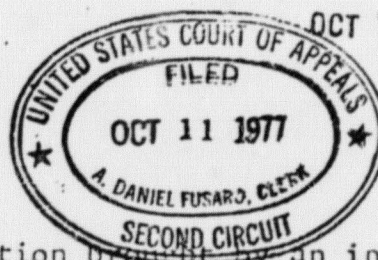
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JON

PLAINTIFFS

E JAMES RAFFONE

DEFENDANTS

SGT. DANIEL SULLIVAN, Milford
Police Dept.;GOVERNOR ELLA T. GRASSO, State
of Connecticut;GOVERNOR ASKEW, State of Florida,
~~dismissed~~ SGT. WILLIAM DELL, Broward
County Sheriff's Dept., Florida

CAUSE Action brought by an inmate pursuant
to the Civil Rights Act of 1871, 42 U.S.C.
§ 1983 and 1985, seeking damages for alleged
violation of his constitutional rights con-
cerning his extradition from Florida, etc.

Salvatore James Raffone
New Haven Correctional Center
245 Shelley Avenue
New Haven, Conn.
Box 100
Somers, Conn.

ATTORNEYS

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New Haven, Conn.

☐ CHECK
HERE
IF CASE WAS
FILED IN
FORMA

DATE
4/28/76
4/30/76

FILING FEES PAID
RECEIPT NUMBER

50313 \$15.00
Deposit: G.F.100869

C.D. NUMBER

\$15.00

STATISTICAL CARDS

CARD DATE MAILED
JS:5
JS:6

ORIGINAL
FILED IN

DATE 1976	NR.	PROCEEDINGS
4/27 1977	1	Complaint, Petition for Writ of Habeas Corpus, Motion to Proceed in Forma Pauperis, filed.
1/12	2	Ruling filed: On April 27, 1976, petitioner, a state prisoner, filed two documents purporting to initiate two lawsuits. While there appears to be a substantial question whether personal jurisdiction can be obtained in this District over the Florida respondents, the petitioner's motion to proceed in forma pauperis will be granted, and service will be made to the extent feasible. SO ORDERED Newman, J. 11-1/12/77. copies mailed.
1/12		Copies of Ruling, petition and Marshals form 285 handed to U.S. Marshal for service on defendants.
1/24	3	Appearance on behalf of the defendant, Ella T. Grasso filed by Attorney Robert E. Beach, Jr. Ass't State's Attorney.
1/27	4	Motion for Extension of Time, until Feb. 18, 1977, to file motion to dismiss pursuant to Rule 12(b)(6), filed by defendant, Ella T. Grasso.
1/28		Order endorsed on above Motion for Extension of Time (filed 1/27) GRANTING same. Newman, J. 11-1/28/77. Copies mailed.
"	5	Appearances of Barney Lapp and Daniel R. Schaefer, Assistant Attorneys General, entered for defendant Governor Ella T. Grasso.
"	6	Motion for Enlargement of Time, until Feb. 18, 1977, for defendant, Governor Ella T. Grasso, within which to file responsive pleadings, filed.
1/31	7	Appearance on behalf of the defendants, Sgt. Daniel Sullivan Milford Police Department, Milford, Connecticut filed by Attorney Leo P. Carroll.
"	8	Motion for extension of time to 2/18/77 in which def't, Sgt. Daniel Sullivan may file an answer and motion to dismiss filed.
1/31		Marshals return of service filed. (Ruling and Petition).
2/1	9	Endorsement entered on defendant's motion for extension of time as follows: "Motion Granted" Newman, J. 11-2/1/77. copies mailed.
2/7		Envelope containing Motion for extension of time and endorsement sent to Mr. Raffone returned marked "return to sender, not here"
2/10		Endorsement entered on motion for enlargement of time as follows: "Granted" Zampano, J. 11-2/10/77. copies mailed.
2/17	10	Answer presenting consolidated defenses under rule 12(g) including defenses under rule 12(b) on behalf of Governor Ella T. Grasso State of Connecticut filed.
2/18	11	Motion for further extension of time filed by Defendant Sgt. Daniel Sullivan.
2/18		Endorsement entered on defendant, Sgt. Daniel Sullivan's motion for further extension of time to March 11, 1977 in which to file an answer and motion to dismiss as follows: "Motion Granted" Newman, J. 11-2/18/77. copies mailed.
2/28	12	Motion to dismiss for failure to state claim, lack of proper service of process, improper venue, and lack of jurisdiction over the person filed.
"	13	Memorandum of law in support of motion to dismiss of defendant Sgt. Pell, Broward Sheriff's Department filed.

(Cont'd.)

CONTINUATION SHEET

SALVATORE JAMES RAFFONE

DEFENDANT

SGT. DANIEL SULLIVAN, Milford
Police Dept., et al

DOCKET NO. N 70-141

PAGE 2 OF _____ PAGES

DATE	NR.	PROCEEDINGS
3/11	14	Motion for Further Extension of Time, until April 1, 1977, to file answer and/or motion to dismiss, filed by Defendant Sgt. Daniel Sullivan.
3/14	15	Motion for enlargement of time to March 29, 1977 filed, by plaintiff.
3/16		Endorsement entered on defendant's motion for further enlargement of time to 4/1/77 to file answer as follows: "Motion Granted" Newman, J. M-3/16/77. copies mailed.
"		Endorsement entered on plaintiff's motion for enlargement of time to 3/29/77 as follows: "Motion Granted" Newman, J. M-3/16/77 copies mailed.
3/18	16	Appearance on behalf of the defendant filed by Attorney Bruce W. Thompson.
3/28	17	Answer and special defenses filed by defendant. <i>Grasso</i>
3/31	18	Motion for enlargement of time to 4/17/77 filed by plaintiff and endorsement entered thereon: "Motion Granted" Newman, J. M-4/1/77. copies mailed.
4/1	19	Motion to withdraw appearance on behalf of the defendant, Sgt. Daniel Sullivan filed by Attorney Leo P. Carroll.
4/22	20	Interrogatories to Governor Ella T. Grasso filed by plaintiff.
"	21	Interrogatories to Governor Ashew filed by plaintiff.
"	22	Interrogatories to Sgt. Wm. Bell filed by plaintiff.
"	23	Interrogatories to Officer Grimsely, Shield #246 filed by plaintiff.
"	24	Interrogatories to Officer Indiviglio, Shield #237 filed by plaintiff.
"	25	Interrogatories to Sgt. Daniel Sullivan filed by plaintiff.
"	26	Motion for leave to file supplemental complaint or original complaint filed by plaintiff.
"	27	Motion to Amend and Supplemental Complaint filed.
"	28	Memorandum of plaintiff in support of motion to deny return to dismiss defendant, Sgt. Bell filed.
"	29	Traverse to the return filed by plaintiff.
5/26	30	Petition for Writ of Habeas Corpus Ad Testificandum filed.
"	31	Memorandum of Law in Support of Petition filed.
6/1	32	Ruling on Plaintiff's motion for leave to file supplemental complaint and defendant Bell's motion to dismiss filed. Motion for leave to file a supplemental complaint is hereby granted. "Accordingly, because personal jurisdiction has not been achieved over defendant Bell, the motion to dismiss as to him is granted. In view of this disposition of the motion, there is no need to discuss the other grounds urged in support of the motion to dismiss" Newman, J. M-6/1/77. copies mailed.

continued

PLAINTIFF		DEFENDANT	DOCKET NO. N76-1
SALVATORE JAMES RAFFONE		ELLA T. GRASSO, GOVERNOR	PAGE ____ OF ____ PAGES
DATE	NR.	PROCEEDINGS	
6/3	33	Affidavit for Entry of default filed by plaintiff and endorsement entered thereon as follows: "Motion for default against defendant Grasso denied; complaint has been answered. Motion for default against defendant Sullivan denied; defendant/agreement to answer within 20 days. Motion for default against defendant Askew, Bell, Grinsley and Indiviglia denied for lack of personal jurisdiction". Newman, J. M-6/6/77. copies mailed.	
6/4		Endorsement entered on Attorney Carroll's motion to withdraw his appearance on behalf of Sgt. Daniel Sullivan as follows: "Motion Granted" Newman, J. M-6/6/77. copies mailed.	
6/24	34	Motion for Judgment on the Pleadings filed by defendant Ella T. Grasso.	
6/24	35	Brief in support of the defendant Ella T. Grasso's Motion for Judgment on the Pleadings filed.	
7/5		Letter received from Attorney Robert E. Beach, Jr. of State's Attorney's office indicating certification of service of motion for judgment on the pleadings to plaintiff and further indicating no objection to any additional time to respond to said motion by plaintiff.	
7/8	36	Motion to compel discovery filed by plaintiff.	
7/8	37	Plaintiff's memorandum of law in support of motion to compel answers to interrogatories filed.	
7/8	38	Affidavit of Salvatore James Raffone filed.	
7/13	39	Supplemental Affidavit of Salvatore James Raffone filed.	
7/22	40	Motion for protective order staying discovery pursuant to Rule 26(c), F.R.C.P. filed, by defendant.	
7/22	41	Objection to Motion to Compel filed, by defendant.	
7/22	42	Memorandum in support of defendant Ella T. Grasso's motion for protective order and objection to plaintiff's motion to compel filed.	
8/3	43	Request for Subpoena Duces Tecum pursuant to Rule 45 (b) F.R.C.P. filed, by plaintiff.	
8/3	44	Motion for Production of Documents pursuant to Rule 34 F.R.C.P. filed by plaintiff.	
9/8	45	Ruling on defendant Grasso's Motion to Dismiss filed. "Accordingly, the complaint must be dismissed for failure to state a federal claim, without prejudice to whatever rights the plaintiff may have under Florida or Connecticut law in the courts of those states. Judgment may enter for all defendants." Newman, J. M-9/8/77. Copies Mailed.	
9/8	46	Judgment filed and entered. "It is ordered and adjudged that judgment be and is hereby entered in favor of all the defendants dismissing the complaint for failure to state a federal claim, without prejudice to whatever rights plaintiff may have under Florida or Connecticut law in the courts of those states." Markowski, C. M-9/8/77. Copies Mailed.	
9/28		Notice of Appeal, Motion to Proceed in Forma Pauperis. Motion	

CONTINUATION SHEET

SALVATORE JAMES RAFFONE

DEFENDANT
SGT. DANIEL SULLIVAN, Milford Police
Dept., et al

DOCKET NO. 76-141

PAGE 3 OF 3 PAGES

DATE	NR.	PROCEEDINGS
1977		
9/28 (contd)		Certificate of Probable Cause, filed by pro se plaintiff.
9/30		Order endorsed on Plaintiff's Motion for Certificate of Probable Cause, GRANTING same. Newman, J. 9-13-77 Copies mailed to Plaintiff, Counsel and U.S.C.A.
"		Order endorsed on Plaintiff's Motion for Leave to Appeal in Forma Pauperis, GRANTING same. Newman, J. 9-13-77 Copies mailed to Plaintiff, Counsel and U.S.C.A.
"		Copies of Notice of Appeal mailed to all counsel, Plaintiff and to U.S.C.A. together with copy of Docket Entries.

FILED

UNITED STATES DISTRICT COURT

SEP 8 12 18 PM '77

DISTRICT OF CONNECTICUT

U. S. DISTRICT COURT
NEW HAVEN, CONN.

SALVATORE JAMES RAFFONE :

v. :

CIVIL NO. N-76-141

SGT. DANIEL SULLIVAN, :

Milford Police Department, :

GOVERNOR ELLA T. GRASSO, :

State of Connecticut :

GOVERNOR ASKEW, :

State of Florida :

MICROFILM

SEP 8 1977

NEW HAVEN

J U D G M E N T

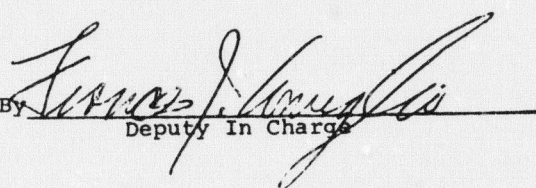
This civil action for damages brought under 42 U.S.C. §1983 by plaintiff, a state prisoner, having come on for consideration on defendant's (Governor Ella T. Grasso, State of Connecticut) motion to dismiss and the Court (Newman, J.) having filed a Ruling on Defendant Grasso's Motion to Dismiss on September 8, 1977, dismissing the complaint as to all defendants, for failure to state a federal claim, without prejudice to whatever rights the plaintiff may have under Florida or Connecticut law in the courts of those states,

It is ORDERED and ADJUDGED that judgment be and is hereby entered in favor of all the defendants dismissing the complaint for failure to state a federal claim, without prejudice to whatever rights plaintiff may have under Florida or Connecticut law in the courts of those states.

Dated at New Haven, Connecticut this 8th day of September, 1977.

SYLVESTER A. MARKOWSKI,

Clerk, United States District Court

By 
Deputy In Charge

MICROFILM

SEP 8 1977
NEW HAVEN

FILED

SEP 8 9 05 AM '77

UNITED STATES DISTRICT COURT U.S. DISTRICT COURT
NEW HAVEN, CONN.
DISTRICT OF CONNECTICUT

SALVATORE JAMES RAFFONE :

V. :

CIVIL NO. N-76-141

SGT. DANIEL SULLIVAN, :
MILFORD POLICE DEPARTMENT, :
ET AL :

RULING ON DEFENDANT
GRASSO'S MOTION TO DISMISS

In this civil action for damages brought under 42 U.S.C. § 1983 plaintiff, a state prisoner, claims that he was illegally abducted from the state of Florida and brought to Connecticut to stand trial while he was in the process of fighting extradition from Florida to Connecticut. He was subsequently convicted in Connecticut and is now incarcerated here. Defendant Ella Grasso, Governor of the State of Connecticut, moves to dismiss on several grounds. Since her argument that the complaint fails to state a cause of action is persuasive, there is no need to discuss the other grounds raised, and plaintiff's discovery motions become moot.

Most of the cases that have discussed the issue have held that there is no cause of action under § 1983 for an improper or even illegal extradition,^{1/} although there is some authority to the contrary.^{2/} Since our Circuit has not ruled on the issue, a fresh look is in order.

The Constitution imposes upon each state an obligation to extradite a fugitive found within its borders to the

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state from which he has fled upon proper demand from that state. This constitutional provision, Art. 4, § 2, ch. 2,^{3/} is implemented by 18 U.S.C. § 3182.^{4/} Yet neither the constitutional provision nor the federal statute establishes the details of the procedure for effecting extradition. This task has been left to the states themselves. Almost all the states, including both Florida^{5/} and Connecticut,^{6/} have adopted the Uniform Criminal Extradition Act. This statute sets up certain procedural safeguards for the benefit of the accused, including a requirement that he be

taken forthwith before a judge of any court having criminal jurisdiction in this [the sending] state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel states that he or they desire to test the legality of his arrest, the judge of such court shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus.^{7/}

Violation of these safeguards may give rise to a cause of action for false arrest or false imprisonment in the asylum state, whose law was breached.^{8/} But since the safeguards derive from state rather than federal law, § 1983 does not provide a remedy for their breach.

But wholly apart from whatever procedural protections a fugitive may have under the law of the state that gives him asylum, he has some degree of protection under the Fourteenth Amendment as well. The time-worn rule that illegality in bringing a defendant into a jurisdiction does not impair the

power of that jurisdiction to prosecute him^{9/} has given way in our Circuit to more modern conceptions of due process. United States v. Toscanino, 500 F.2d 267 (2d Cir. 1974). Toscanino applied the rule of Rochin v. California, 342 U.S. 165 (1952), to hold that due process would be violated if a defendant had been brought into the prosecuting jurisdiction "as the result of the government's deliberate, unnecessary and unreasonable invasion of the accused's constitutional rights." 500 F.2d at 275. Conduct sufficiently "shocking to the conscience" to require invalidation of a conviction on due process grounds also supports a cause of action under the Civil Rights Act. Johnson v. Glick, 481 F.2d 1028 (2d Cir. 1973), cert. denied sub nom. Employee-Officer John v. Johnson, 414 U.S. 1033 (1973). If plaintiff had alleged brutal or outrageous conduct comparable to that alleged in Toscanino, he would have stated a cause of action.

But even on the most liberal reading of this pro se complaint, see Haines v. Kerner, 404 U.S. 519 (1972), plaintiff has not alleged this type of conduct. The most the complaint alleges is that plaintiff was taken into custody on the extradition warrant and transferred to the custody of Connecticut officials before he had exhausted his statutory challenges to extradition. The proceedings, though irregular if the allegations of the complaint are accepted as true, lack "any allegation of that complex of shocking governmental conduct sufficient to convert an abduction which is simply illegal into one which sinks to a violation of due process."

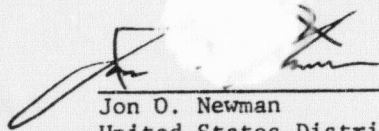
United States ex rel. Lujan v. Gengler, 510 F.2d 62, 66 (2d Cir. 1975), cert. denied, 421 U.S. 1001 (1975). As in Lujan, and in contrast to Toscanino,^{10/} "but for the charge that the law was violated during the process of transporting him" to Connecticut, plaintiff "charges no deprivation greater than that which he would have endured through lawful extradition." 510 F.2d at 66. See also United States v. Lira, 515 F.2d 68 (2d Cir. 1975), cert. denied, 423 U.S. 847 (1975).

It is conceivable that there are some circumstances short of outright governmental brutality that could give rise to a civil rights cause of action for illegal extradition. If plaintiff had been acquitted upon his rendition to Connecticut, and if he could show that he was removed from Florida to Connecticut without probable cause, he might have a Fourteenth Amendment claim for the deprivation of liberty he suffered from the illegal arrest, detention, and transportation to Connecticut. Cf. Pierson v. Ray, 386 U.S. 547 (1967). But wholly apart from the problems plaintiff would encounter if he attempted to challenge probable cause in the face of an unreversed judgment of conviction,^{11/} he does not even allege that the arrest and subsequent extradition were effectuated without probable cause. Under these circumstances he has no claim for damages under the Civil Rights Act.

Accordingly, the complaint must be dismissed for failure to state a federal claim, without prejudice to whatever rights the plaintiff may have under Florida or Connecticut

law in the courts of those states. Judgment may enter for all defendants.

Dated at Hartford, Connecticut, this 6 day of September, 1977.



Jon O. Newman

United States District Judge

FOOTNOTES

1/ Waits v. McGowan, 516 F.2d 203 (3d Cir. 1975) Hines v. Guthrey, 342 F. Supp. 594 (W.D. Va. 1972); Johnson v. Buie, 312 F. Supp. 1349 (W.D. Mo. 1970); Campbell v. Smith, 308 F. Supp. 796 (S.D. Ga. 1970); Crawford v. Lydick, 179 F. Supp. 211 (W.D. Mich. 1959), aff'd per curiam, 280 F.2d 426 (6th Cir. 1960), cert. denied, 364 U.S. 849 (1960).

2/ Sanders v. Conine, 406 F.2d 530 (10th Cir. 1974); Picking v. Pennsylvania R. Co., 151 F.2d 240 (3d Cir. 1945), cert. denied, 332 U.S. 776 (1947). The issue was left open in Pierson v. Grant, 527 F.2d 161 (8th Cir. 1975).

3/ "A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."

4/ Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

5/ West's F.S.A. §§ 941.01 to 941.30.

6/ Conn. Gen. Stat. §§ 54-157 to 54-185.

7/ Section 10 of the Uniform Criminal Extradition Act.

8/ Section 11 of the Uniform Criminal Extradition Act provides for criminal sanctions for delivering a person to the demanding state in violation of the Act.

9/ Frisbie v. Collins, 342 U.S. 519 (1952); Ker v. Illinois, 119 U.S. 436 (1888).

10/ Toscanino characterized the exclusionary rule as the only effective deterrent to undisciplined law enforcement activities. 500 F.2d at 276-77 n.6. Lujan, on the other hand, cited the availability of other deterrents, including "the financial cost of the operation, the possibility of alienating other nations, and the risk that the kidnappers would be prosecuted in a foreign territory for their offense." 510 F.2d at 68 n.9. Lujan also mentioned in passing the possibility that the abductors "might be liable in a foreign court for civil damages as well." 510 F.2d at 64-65 n.3. The analogue in the federal context domestically might be a civil rights cause of action under the circumstances outlined in the text, infra, or it might be a common law civil action in the asylum state for false arrest or false imprisonment.

11/ In Pouncey v. Ryan, 396 F. Supp. 126 (D. Conn. 1975), this Court adopted the rule that a plaintiff cannot challenge probable cause in a damage action in the face of a valid judgment of conviction. The reasoning in Pouncey was not that the plaintiff was collaterally estopped by virtue of the state conviction, for the issue of the legality of the arrest was neither impliedly nor actually determined in the state criminal proceeding. 396 F. Supp. at 128 n.2. Rather the Court adopted as the § 1983 rule the common law defense to liability for false arrest or false imprisonment where the plaintiff's conviction stands.

Other courts have applied collateral estoppel doctrine to arrive at the same result. See, e.g., Covington v. Cole, 528 F.2d 1365 (5th Cir. 1976); Shank v. Spruill, 406 F.2d 756 (5th Cir. 1969); Watson v. Devlin, 167 F. Supp. 638 (E.D. Mich. 1958). In Shank, for example, the petitioner claimed that Georgia officials forcibly brought him from Florida to Georgia to stand trial for a Georgia offense. The court held that his civil rights cause of action for improper arrest could not be maintained as long as his conviction stood. See also Campbell v. Smith, 308 F. Supp. 796 (S.D. Ga. 1970) (conviction in the receiving jurisdiction shows probable cause and cures any defect in probable cause for extradition). It is not entirely clear why the doctrine of collateral

estoppel is appropriate unless the issue of the validity of the arrest was actually litigated in the state criminal proceeding. See Jackson v. Official Representatives and Employees of the Los Angeles Police Dept., 487 F.2d 885 (9th Cir. 1973) (validity of arrest never considered on its merits; thus judgment of conviction did not collaterally estop state prisoner in civil rights suit); cf. Guerro v. Mulhearn, 498 F.2d 1249, 1254-55 (1st Cir. 1974); Mastracchio v. Ricci, 498 F.2d 1257, 1261 n.3 (1st Cir. 1974), cert. denied, 420 U.S. 909 (1975); and Mulligan v. Schlachter, 389 F.2d 231 (6th Cir. 1968), all indicating in dictum that false arrest might constitute a wrong compensable under the Civil Rights Act without regard to the outcome of the state criminal proceedings.

Since the Pouncey rule is stare decisis in this Court as to challenges to arrest while the judgment of conviction stands, it is appropriate to apply it to the present case. The only distinctions between a simple arrest within the jurisdiction by officers of the prosecuting state and an arrest made in another state for the purposes of extradition -- that the arrestee usually travels a greater distance, and that the need for on-the-spot judgments by arresting officers is not generally as great -- are too tenuous to require a different rule for extraditions.

11/8

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
SALVATORE RAFFONE,

Plaintiff-Appellant,

-against-

SGT. DANIEL SULLIVAN, et al.,

Defendants-Appellees.
-----x

Docket No. 77-2125

AFFIDAVIT OF
SERVICE BY MAIL

STATE OF NEW YORK)
 SS.:
COUNTY OF NEW YORK)

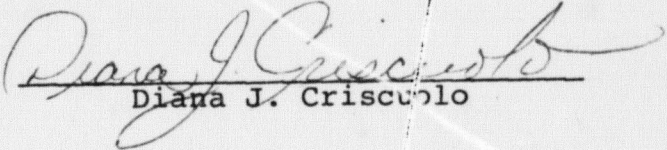
The undersigned, being duly sworn, deposes and says:
Deponent is over the age of 18 years, is not a party to this
action and resides at 149 Windsor Road, Staten Island, New
York.

On the 8th day of November, 1978, deponent served
the annexed Brief for Petitioner-Plaintiff-Appellant upon
each of the below listed attorneys by depositing two true
copies of the same securely enclosed in a postpaid, properly
addressed wrapper in an official depository under the ex-
clusive care and custody of the United States Postal Service
within the State of New York.

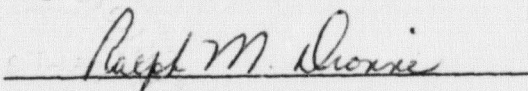
Robert E. Beach, Jr., Esq.
Assistant State's Attorney
Drawer H, Amity Station,
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Messrs. Shay, Del Sole &
Thompson
900 Chapel Street
New Haven, Connecticut 06510

Barney Lapp, Esq.
Assistant Attorney General
30 Trinity Street
Hartford, Connecticut 06115


Diana J. Criscuolo

Sworn to before me this 8th
day of November, 1978


RALPH M. DIONNE
NOTARY PUBLIC, State of New York
No. 61-6042070
Qualified in Queens County
Cert. Filed in New York County
Commission Expires March 30, 1980



STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

MARY KO , being duly sworn, deposes and
says that she is employed in the office of the Attorney
General of the State of New York, attorney for defendants-appellants
herein. On the 17th day of August , 1977 , she served
the annexed upon the following named persons:

BRONX LEGAL SERVICES
579 Courtlandt Avenue
Bronx, New York 10451
Att: Stephen M. Latimer

ROWLEY & FORREST
729 National Savings Bank Bldg.
90 State Street
Albany, New York 12207

Attorney^s in the within entitled action by depositing
a true and correct copy thereof, properly enclosed in a post-
paid wrapper, in a post-office box regularly maintained by the
Government of the United States at Two World Trade Center,
New York, New York 10047, directed to said Attorney^s at the
addresses within the State designated by them for that
purpose.

Sworn to before me this
18th day of August , 1977

Mary Ko

Assistant Attorney General
of the State of New York